

Item No: _____

Prepared By: Gloria Kelly
Real Estate Services

Commissioner: _____

Approved by: _____
County Attorney

RESOLUTION APPROVING THE LEASE OF 978 SQUARE FEET OF OFFICE SPACE LOCATED AT 600 JEFFERSON AVENUE BETWEEN THE URBAN CHILD INSTITUTE, A TENNESSEE NONPROFIT CORPORATION AND SHELBY COUNTY GOVERNMENT, ON BEHALF OF THE SHELBY COUNTY OFFICE OF EARLY CHILDHOOD AND YOUTH AND TO AUTHORIZE THE SHELBY COUNTY MAYOR TO EXECUTE THE LEASE AGREEMENT. SPONSORED BY COMMISSIONER MIKE CARPENTER.

WHEREAS, Shelby County Government, on behalf of the Shelby County Office of Early Childhood and Youth located within the City of Memphis, Shelby County, Tennessee, is in need of office space; and

WHEREAS, The Urban Child Institute, a Tennessee nonprofit corporation, has 978 square feet of space available located at 600 Jefferson Avenue, Memphis, Tennessee 38105; and

WHEREAS, Shelby County Government, on behalf of the Shelby County Office of Childhood and Youth has requested to lease 978 square feet of office space located at 600 Jefferson Avenue for its general office purpose for an initial term of one year (1), with the option to extend the initial term for one (1) renewal term upon written mutual consent of all parties, at an initial term rent in the amount of One Thousand, One Hundred Eighty One and 75/100 Dollars (\$1,181.75) per month under the terms and conditions stated in the attached Lease Agreement, which is hereby incorporated by reference; and

WHEREAS, It is deemed to be in the best interest of Shelby County Government, on behalf of the Shelby County Office of Childhood and Youth to lease the hereinabove said 978 square feet of office space located at 600 Jefferson Avenue for its general office purpose, under the terms and conditions stated in the aforescribed Lease Agreement from the Urban Child Institute, a Tennessee nonprofit corporation; and

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the aforescribed lease of 978 square feet of office space at 600 Jefferson Avenue to Shelby County Government, on behalf of the Shelby County Office of Childhood and Youth for its general office purpose, under the terms and conditions stated in the aforescribed Lease Agreement be and the same is hereby approved.

BE IT FURTHER RESOLVED, That the Mayor be and he is authorized to execute the attached Lease Agreement and any other documents necessary to effect the

lease of said 978 square feet of office space to Shelby County Government, on behalf of the Shelby County Office of Childhood and Youth for the aforementioned purpose.

BE IT FURTHER RESOLVED, That the lease agreement is approved subject to the conditions of the lease agreement and grant funds provided by the Governors Highway Safety Office (GHSO).

BE IT FURTHER RESOLVED, That this Resolution shall take effect from and after the date it shall have been enacted according to due process of law, the public welfare requiring it.

Shelby County Mayor

Date: _____

ATTEST:

Clerk of County Commission

ADOPTED: _____

SUMMARY SHEET

I. Description of Item

Shelby County Government on behalf of the Shelby County Office of Childhood and Youth request to lease 987 square feet of office space located at 600 Jefferson Avenue, within the City of Memphis, Shelby County, Tennessee from The Urban Child Institute, a Tennessee Nonprofit Corporation for its general office purpose. The initial lease term is for one (1) year, with the option to renew for one (1) initial year, at an initial term rent in the amount of One Thousand, One hundred eight one and 75/100 (\$1,181.75) per month, under the terms and conditions stated in the attached Lease Agreement. This lease agreement is approved subject to the conditions of the lease agreement and grant funds provided by the Governors Highway Safety Office (GHSO). Based on the above, it is hereby recommended by the Administration that this Agreement be approved.

II. Source and Amount of Funding

Maximum of \$14,181.00 – Governors Highway Safety Office (GHSO) Grant

III. Contract Items

Lease Agreement

IV. Additional Information Relevant to Approval of this Item

N/A

LEASE AGREEMENT

THIS LEASE ("Lease") is made by and between The Urban Child Institute, a Tennessee nonprofit corporation, ("Landlord"), and Shelby County Government, on behalf of the Shelby County Office of Early Childhood and Youth ("Tenant")

WITNESSETH:

1. **LEASED PREMISES.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following described premises ("Leased Premises"): Office space deemed to contain approximately 978 square feet of floor area, of the building (the "Building") located on the real property municipally known as 600 Jefferson Avenue, Memphis, Tennessee 38105 (the "Property"). The Property is legally described on Exhibit "A" and the Leased Premises and Building are depicted on Exhibit "B", each of which is attached hereto and incorporated herein by reference.
2. **TERM.** The term of this Lease shall commence on October 1, 2009 and shall end on September 30, 2010 ("Term") (unless sooner terminated or extended as provided for herein).
3. **RENT.** In consideration of this Lease, Tenant promises and agrees to pay the Landlord rent for said premises at the rate of ONE THOUSAND, ONE HUNDRED EIGHTY ONE AND 75/100 (\$1,181.75) DOLLARS PER MONTH for a term of one (1) year totaling FOURTEEN THOUSAND, ONE HUNDRED EIGHTY ONE AND 00/100 (\$14,181.00) DOLLARS to Commercial Alliance Management, 3175 Lenox Park Drive, Ste. 100, Memphis, Tennessee, 38115.
4. **EARLY TERMINATION.** Either party to this LEASE may cancel this Agreement without penalty by giving a written NINETY (90) DAY NOTICE to the other party.
5. **EXTENSION PERIODS.** Landlord hereby grants to Tenant two (2) separate options to extend the Term of this Lease for one (1) additional one year period (hereinafter "Extension Periods") on the same terms and conditions as set forth in this Lease for the initial Term. In order to extend the Term, Tenant must: (a) not be in default of any terms and conditions of this Lease beyond any applicable curative period(s) AND (b) give the Landlord written notice of its desire to exercise said option no later than ninety (90) days prior to the expiration of the Term then in effect, and upon such exercise, the extended term shall become part of the Term of this lease.
6. **SUBJECT TO FUNDING.** This lease is subject to annual appropriations of funds by the Governors Highway Safety Office (GHSO) grant. In the event sufficient funds for this lease are not appropriated by the Governors Highway Safety Office for any of its fiscal period during the term hereof, then this Lease will be terminated without penalty. In the event of such termination, the Landlord shall be paid just and equitable

compensation for the use of the property up to the termination and vacation of the leased premises.

- 7. USE AND POSSESSION.** Subject to the conditions hereafter set forth, the Leased Premises may be used for general office purpose and shall not be used for any other purpose without prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed, or conditioned. Tenant shall not use the Leased Premises for any unlawful purpose or so as to constitute a nuisance. Tenant represents and warrants that it is a Governmental Entity and will use the Leased Premises only for the furtherance its business activities. In the event Tenant fails to use the Lease Premises for such purposes, Landlord shall have the right to terminate this Lease upon ninety (90) days written notice. At the expiration of the Term, Tenant shall deliver the Leased Premises to Landlord in good repair and condition, ordinary wear and tear and damage by casualty excepted.
- 8. QUIET POSSESSION.** Landlord agrees that Tenant, provided it keeps and performs all terms and covenants contained herein on contained herein on the part of Tenant to be kept and performed, shall at all times during the existence of this Lease peaceably and quietly have, hold and enjoy the Leased Premises, without suite, trouble or hindrance from Landlord, or any person claiming under Landlord.
- 9. ALTERATIONS.** Tenant shall not make any alterations, additions or improvements of a structural or non-structural nature to or of the Leased Premises or any part thereof without prior written consent of Landlord. Any alterations, additions, or improvements shall be at Tenant's sole cost and expense. Any alterations,, additions or improvements to the Leased Premises (other than moveable equipment or furniture or other personal property owned by Tenant) shall at once become the property of the Landlord and shall be surrendered to the Landlord upon the termination of this Lease unless otherwise agreed to in writing. Tenant shall use a contractor and architect who are bondable, licensed in the state of Tennessee and approved by Landlord in writing in advance. Additionally, Tenant's plans and specifications for the alterations, additions or improvements must be approved by Landlord in writing in advance; however, Landlord's approval shall not be construed as an approval by Landlord of their conformity with any governmental building code or other governmental requirement or the structural stability or structural design of same. Tenant's contractor shall obtain and maintain such insurance as is reasonably required by Landlord and shall provide proof of such insurance overage to Landlord upon request. All construction work done by Tenant within the Leased Premises shall be performed in a good and workmanlike manner using first quality materials and in compliance with all governmental building codes and other governmental requirements, and in such manner as to minimize interference with other construction in progress and with other tenants in the Building. Tenant shall promptly pay when due for all labor and materials furnished in connection with all of Tenant's construction work. Additionally, Tenant shall promptly discharge, by payment, bonding, or other lawful means, any and all lien claims filed in order to secure payments to any party or parties furnishing labor or materials in connection with Tenant's construction work so that the

Landlord's title shall not be clouded or impaired by any such lien or lien claim. Any approval required under this provision shall not be unreasonably withheld.

10. COMMON FACILITIES. The Common Facilities shall include the parking lot and driveways, landscape areas, sidewalks, exterior garbage dumpster for disposal of Tenant's trash, shared foyer, conference rooms on the first floor, auditorium, cafeteria, stairwells, and restrooms. All other areas of the Property that are not currently building areas shall be deemed Common Facilities. Tenant is hereby granted use of and access to all Common Facilities at no charge, and landlord shall provide Tenant with keys necessary to access all such areas.

11. SERVICES AND UTILITIES. During the Term, Landlord shall furnish to Tenant the following services and utilities, the cost of which shall be paid by Tenant as part of the Service Fee: water, gas, electricity, sewer, sanitation, heating and air conditioning, elevator, and janitorial services. In the event Tenant's use of the Leased Premises or Tenant's equipment causes an increase in the cost of certain utilities and/or services provided, Tenant shall be responsible for reimbursing Landlord in an amount equal to the additional expense incurred.

12. REPAIR AND MAINTENANCE. During the Term, Landlord shall maintain the Leased Premises, the Building and the Common Facilities in good repair and tenantable condition, including, but not limited to, the maintenance and repair of the elevator, if any, plumbing, electrical, heating, air conditioning, and ventilating equipment, fixtures and systems, to the end that all such facilities are kept in good operative condition, except in case of damage arising solely from a willful or negligent act of Tenant's agent, invitee, or employee. Landlord's obligations shall also include, but are not limited to, periodic painting, furnishing and replacing electrical light bulbs, fluorescent tubes, ballasts and starters, and air conditioning and ventilating equipment filters.

13. PEST CONTROL. Landlord shall maintain the Leased Premises in a condition that is free of pests, rodents, and other vermin, the cost of which shall be paid by Tenant as part of the Service Fee.

14. SURRENDER OF POSSESSION. Upon termination or expiration of this Lease, Tenant shall peaceably surrender to Landlord the Leased Premises in as good order and condition as when received, reasonable use and wear thereof and damage by casualty excepted. Tenant shall have no duty to remove any improvements or fixtures placed by it on the Leased Premises or to restore any portions of the Leased Premises altered by it, save and except in the event Tenant elects, with Landlord's written consent, to remove any such improvement or fixture and such removal causes damages or injury to the Leased Premises and then only to the extent of any such damage or injury.

15. DESTRUCTION; CONDEMNATION. (a) Destruction. If the Leased Premises are totally destroyed by fire or other casualty, this Lease shall terminate. If such

casualty shall render (10) percent of loss of the floor space of the Leased Premises unusable for the purpose intended, Landlord shall effect restoration of the Leased Premises as quickly as it is reasonably possible.

In the event such casualty shall render more than ten (10) percent of such floor space unusable but not obvious total destruction, Landlord shall forthwith give notice to Tenant of the specific number of days required to repair the same. If Landlord under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, Tenant, in either such event, at its option, may terminate this Lease.

In the event of any such destruction other than total, where Tenant has not terminated the Lease as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Landlord shall diligently prosecute the repair of said Leased Premises, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten (10) percent or less of the floor space, or within the period specified in Landlord's notice in connection with partial destruction requiring more than ten (10) percent, Tenant shall have the option to terminate the Lease.

In the event Tenant remains in possession of said Leased Premises though partially destroyed, the Service Fee as herein provided shall be reduced by the same ratio as the net square fee Tenant is thus prevented from occupying bears to the total net square feet in the Leased Premises; "Net square feet" shall mean actual inside dimensions and shall not include corridors, stairwells, elevators, and restrooms.

Notwithstanding anything contained herein to the contrary, Landlord's obligations hereunder are subject to the reasonable requirements of any lender providing financing to Landlord secured by the Leased Premises, Building or Property.

- (b) **Condemnation.** If during the Term of this Lease or any renewal thereof, the whole of the Leased Premises, or any portion thereof, is acquired or condemned by public authority for public use, then the Term of this Lease shall cease and terminate as of the public authority, whichever event occurs first. Upon such occurrence, the Service Fee shall be proportioned as of such date. The Landlord shall be entitled to the entire award for such taking except for any separate statutory claim (recoverable from the condemning authority and not from Landlord) of Tenant for injury, damage or destruction of Tenant's business accomplished by such taking. In no such event shall Landlord be liable to Tenant for any business interruption, diminution in use or for the value of any unexpired Term of this Lease. Landlord agrees immediately within five (5) business days after any notice of intended or actual acquisition or condemnation to give Tenant written notice thereof, providing to Tenant full details of such taking or appropriation including without limitation copies of all condemnation plans or surveys submitted by the condemning authority, a statement of the nature of the project to be

conducted by the condemning authority, and such other information as might be necessary to enable Tenant to determine its future course of conduct.

Notwithstanding anything contained herein to the contrary, Landlord's obligations hereunder are subject to the reasonable requirements of any lender providing financing to Landlord secured by the Leased Premises, Building or Property.

16. DEFAULT. In the event Tenant fails to perform any covenants and agreements of the Lease and said failure continues for thirty (30) days following Tenant's receipt of written notice from Landlord thereof, or if the default is of such a character as to require more than thirty (30) days to cure, then, if Tenant shall fail to use reasonable diligence in curing such default, Landlord may cure such default for the account of and at the cost and expense of Tenant, and the reasonable sums so expended by Landlord shall be deemed to be a Service Fee and on demand shall be paid by Tenant on the day when the Service Fee shall next become due and payable. Additionally, in addition to all legal rights and remedies available to Landlord, Landlord may elect to terminate this Lease, or retake possession of the Leased Premises, or enter the Leased Premises and relet the same without termination, in which later event the Tenant covenants and agrees to pay any deficiency after Tenant is credited with the Service Fee thereby obtained less all reasonable costs for repairs and expenses (including the expenses of obtaining possession but excluding any costs for remodeling the Leased Premises for a new tenant), or the Landlord may resort to any two or more of such remedies or rights, and adoption of one or more such remedies or rights shall not necessarily prevent the enforcement of others concurrently or thereafter. Proof of any fees, expenses and/or damages is required and must be delivered pursuant to the requirements of the Notice Section herein to Tenant within fifteen (15) days of Tenant's vacation of the premises or same is deemed waived by Landlord.

17. ASSIGNMENT AND SUBLETTING. Tenant shall not encumber or assign this Lease or sublet all or any part of the Leased Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed, or conditioned; provided, however, in no event shall Landlord be obligated to consent to a proposed assignment or sublease if the proposed assignee or subtenant is not a nonprofit entity engaged in activities consistent with the mission and purpose of landlord or whose use of the Leased Premises would be inconsistent with Landlord's mission and purpose. If such assignment or sublet is granted, said assignment or sublease shall in no way relieve Tenant from its obligation to pay the Service Fee or to perform the conditions, covenants and provisions of this Lease.

18. HOLDING OVER. In the event Tenant remains in possession of the Leased Premises after the expiration of the Term, or any extension thereof, this Lease shall be automatically extended on a month to month basis, subject to thirty (30) days termination by either party, and otherwise on the terms and conditions herein specified as applicable.

- 19. LAWS, RULES AND REGULATIONS.** Tenant hereby covenants and agrees to comply, at its sole cost and expense, with all of the ordinances, rules, regulations and laws of the city, county or state and federal authorities having jurisdiction over the Leased Premises and related solely to Tenant's use and occupancy of the Lease Premises.
- 20. INSPECTION.** Landlord reserves the right to enter and inspect the Leased Premises, at reasonable times, and to render services, conduct tests and make any necessary repairs to the Lease Premises. Landlord must give forty-eight (48) hours written notice of its intent to enter under this provision.
- 21. TENANT'S LIABILITY INSURANCE.** Lessor acknowledges lessee is a governmental entity and, as such, is self insured. Additionally, Lessor acknowledges Lessee is covered under the Governmental Tort Liability Act and afforded all rights, protections and limitations thereunder.
- 22. LANDLORD'S LIABILITY INSURANCE.** Landlord shall, at Landlord's expense, obtain and keep in force during the Term of this Lease, a policy of commercial general liability insurance with an insurance company licensed to do business in the State of Tennessee and having a Best's rating of A or better in the minimum amount of One Million Dollars (\$1,000,000.00) combined annual aggregate limits for bodily injury (including death) and property damage (with no lower per occurrence limits), insuring Landlord against any liability arising out of the use, ownership, occupancy and/or maintenance of the Common Facilities as defined under this Lease. Upon written request of Tenant, Landlord shall furnish Tenant with a certificate evidencing the insurance required.
- 23. LIMITED LIABILITY.** The liability of the Landlord for Landlord's obligations under this Lease shall not exceed and shall be limited to the value of the Landlord's interest in the Leased Premises, the Building of which the Leased Premises is a part, and the Property, and Tenant shall not look to any other property or assets of the Landlord in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations.
- 24. TIME OF ESSENCE.** Time is of the essence of this Lease, and the terms and provisions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, executives, administrators, successors, and assigns to the respective parties.
- 25. SUCCESSORS AND ASSIGNS.** This Lease shall bind and inure to the benefit of the successors, assigns, heirs, executors, administrators and legal representatives of the parties hereto.
- 26. ENTIRE AGREEMENT: MODIFICATION: SEVERABILITY.** This Lease and any exhibits thereto contain all of the agreements and conditions between Landlord and Tenant and may not be amended or modified unless set forth in writing executed by both parties. The unenforceability, invalidity, or illegality of any provision of this Lease shall not render any other provision herein unenforceable, invalid, or illegal.

27. NON-WAIVER. No waiver of any covenant or condition of this Lease by either party shall be deemed to imply or constitute a further waiver of the same covenant or condition or any other covenant or condition of this Lease.

28. WARRANTIES OF AUTHORITY. The persons executing this Lease on behalf of Tenant represent and warrant to Landlord as of the date Tenant executes and delivers this Lease that the signatories signing on behalf of Tenant have the requisite authority to bind Tenant pursuant to Tenant's bylaws or a resolution authorizing the same by Tenant's board of directors. The person executing this Lease identified as Landlord represents and warrants to Tenant as of the date Landlord executes and delivers this Lease that he currently holds title to the Lease Premises, Building and Property in fee-simple, and has full right and authority to enter into this Lease.

29. NOTICES. For the purpose of notice or demand, the respective parties shall be served by certified or registered United States Postal Service mail, return receipt requested, or via a national overnight courier service requiring a signature upon delivery (such as Federal Express), with all postage or delivery fees fully prepaid by the sender, at the respective address set forth below. Such addresses may be changed from time to time by giving notice as herein provided to the other party. Notices shall be deemed effective upon signature for delivery or delivery refusal.

To Landlord at:

Urban Child Institute
A Tennessee nonprofit corporation
Attn: Gene Cashman
600 Jefferson Avenue, Suite 200
Memphis, TN 38105

and

Commercial Alliance Management
3175 Lenox Park Drive, Ste 100
Memphis, TN 38115

To Tenant:

Tom Moss, Administrator
Shelby County Government
Land Bank Department
584 Adams Avenue
Memphis, TN 38103

and

Shelby County Government
160 North Main Street, Ste 550
Memphis, TN 38103
Attn: Contracts Administration

30. SECTIONS AND OTHER HEADINGS. The section headings contained in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement.

31. COUNTERPARTS. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

32. GOVERNING LAW. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the Landlord agrees that all

actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

- 33. FINAL INSPECTION AND CLAIM FOR DAMAGES.** Landlord agrees to complete a final inspection with Tenant prior to Tenant turning over possession of the leased premises. At the final inspection, any damage to the premises must be reduced to writing and signed by both the Landlord and an authorized representative of the Tenant acting in his/her official capacity. Within thirty (30) calendar days of inspection, Landlord must deliver per the means provided in the Notice Section of this Contract to Tenant a final bill for any claimed damages and associated expenses. If same is not delivered to Tenant within the proscribed time and means as set forth in this Contract, same is deemed waived and uncollectible. Additionally, if Landlord refuses to complete a final inspection with Tenant or reduce damages/expenses to writing and have same signed by both parties at Final Inspection, Landlord has voluntarily waived his right to claim damages or expenses associated herewith.

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IN WITNESS WHEREOF, this Lease has been executed by the parties as of this _____ day of _____, 2009.

**THE URBAN CHILD INSTITUTE
A TENNESSEE NONPROFIT
CORPORATION**

By: _____
Gene Cashman, Executive Director

**SHELBY COUNTY GOVERNMENT
ON BEHALF OF THE SHELBY
COUNTY OFFICE OF EARLY
CHILDHOOD AND YOUTH**

By: _____
Shelby County Mayor

Date: _____

Approved as to Form:

Assistant County Attorney/
Contract Administrator

Other County Approvals:

County Real Estate Manager

Land Bank Administrator

**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, **MAYOR OF SHELBY COUNTY, TENNESSEE**, with whom I am personally acquainted, and who, upon oath, acknowledged himself/herself to be **Mayor** of Shelby County, Tennessee, the within named bargainor, one of the counties of the State of Tennessee, and that he/she as such **Mayor**, of said county, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of Shelby County, Tennessee, by himself/herself as **Mayor** of said Shelby County, Tennessee.

WITNESS my hand and official seal at office this _____ day of _____, 2009.

Notary Public

My Commission Expires

**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared **GENE CASHMAN**, with whom I am personally acquainted, and who, upon oath, acknowledged himself/herself to be **Executive Director**, of the **URBAN CHILD INSTITUTE, A TENNESSEE NONPROFIT CORPORATION**, the within named bargainor, a corporation of the State of Tennessee, and that he/she as such **Executive Director**, of said corporation, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as **Executive Director**.

WITNESS my hand and official seal at office this _____ day of _____, 2009.

Notary Public

My Commission Expires
